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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|-------------------------------|
| 10/627,246 | 07/25/2003 | Garry Tsaur | | 4189 |
| 29745 | 7590 | 11/03/2004 | | |
| JOE NIEH 18760 E. AMAR ROAD #204 WALNUT, CA 91789 | | | | EXAMINER WALCZAK, DAVID J |
| | | | | ART UNIT 3751 PAPER NUMBER |

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/627,246 | TSAUR, GARRY | |
| | Examiner | Art Unit | |
| | David J. Walczak | 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2 and 5-12 is/are rejected.
- 7) Claim(s) 3,4 and 13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Abstract

The abstract of the disclosure is objected to because phrases which can be implied, such as "is disclosed" (see line 2) and legal phraseology such as "means" (see lines 2 and 6) should not be present therein. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the screw-on cap (claim 2) must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The verbiage in claims 5, 6, 8, 10 and 11 does not have antecedent basis in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by Haber et al. (hereinafter Haber). In regard to claim 1, Haber discloses an applicator comprised

of an applicator with an applicator tip 24 sealed along with a fluid 38 (see Figure 7A) within an elongated housing 22 with an opening means 36 near the tip wherein when the housing is open through the opening means (Figure 7B) the applicator tip is exposed and the fluid in the housing may be applied by the tip. In regard to claim 2, the opening means 36 is a reduced breakable section. In regard to claims 5 and 6, the housing is divided into two sections (each section on an opposite side of wall 28, viewing Figure 7A, fluid 34 is in one section and fluid 38 is in the other) such that when the housing is opened, the fluids in the two section will commingle at the tip.

Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Korteweg. Korteweg discloses an applicator with an absorbent cotton applicator tip 16 affixed to an elongated member 14 sealed with fluid within a housing 20 with an opening means 30 near the tip such that when the housing is open at the opening means, the tip is exposed and the fluid may be applied.

Claims 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Dumler et al. (hereinafter Dumler). In regard to claim 9, Dumler discloses an applicator having two applicator tips 1, 2 and an enlarged section 4a, 6a (see Figure 7) between the tips sealed with a fluid within an elongated housing 7, 8, 22 with opening means 13, 14 near each tip such that when the housing is open through the opening means, the tips are exposed and the fluid may be applied by the tips. In regard to claim 10, both tips may be made from foam (see column 1, lines 59-63 and column 2, lines 63-65). In regard to claim 11, tips 2a and 2d have a thin pointed ends. In regard to claim 12, the enlarged section separates the housing into two separate sections containing different fluids.

Allowable Subject Matter

Claims 3, 4 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Costa, Van Der Bosch, Bau and Robert references are cited for disclosing other sealed applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
10/29/04